

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY BALLE(5),

Defendant.

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Case No. 4:11CR246 CDP-5

ORDER

This matter is before the Court on defendant Timothy Balle's motions to suppress evidence and identifications. As with the other pretrial motions in this case, these motions were referred to United States Magistrate Judge Frederick R. Buckles under 28 U.S.C. § 636(b). Judge Buckles received briefs and heard evidence related to the motions. He then filed his Report and Recommendation recommending that the motions be denied. Defendant Balle has filed objections to each of Judge Buckles' recommended rulings.


I have conducted a *de novo* review of the motions, including reviewing all briefs and transcripts and reviewing all evidence submitted at the hearing. I conclude that Judge Buckles properly found the facts from the evidence and properly applied the law to those facts. There is no doubt that Agent Van Mierlo's re-entry to the home after the protective sweep was completed was an improper warrantless search, and that her later application for the search warrant contained

false information. But after careful consideration, I agree with Judge Buckles that when the false information is excluded and had only the correct, truthful information been provided, there would have been sufficient probable cause to support the issuance of the warrant. I will adopt the factual findings, the reasoning, and the legal conclusions reached by Judge Buckles with regard to this search and with regard to the identifications.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [#1002] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that defendant Timothy Balle's motion to suppress evidence [#324] is denied, his motion so suppress identification related to the alleged August 10, 2009 incident [#491] is denied, and his motion to suppress identification related to the alleged August 15, 2009 incident [#325] is denied.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of October, 2012.